PUBLIC RESERVE

Policy and Background Information

Policy Paper

EDMONTON METROPOLITAN REGIONAL PLANNING COMMISSION

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FOREWORD

The purpose of this report is to present the Commission's policies on Public Reserve and to provide the background information to these policies. The report is divided into two parts.

Part I contains Public Reserve policies adopted by the Edmonton Metropolitan Regional Planning Commission in December, 1988. These policies will guide the Commission in making decisions on subdivision applications involving the dedication of Public Reserve. They may also serve as a useful reference for other municipalities in the Region with their own subdivision approving authority.

Part II provides background information on the enabling planning legislation dealing with Public Reserve, as contained in the Planning Act. This information is intended to assist the reader in understanding the legislation, and to serve as a supplement to the more specific legal and planning advice the reader may receive regarding Public Reserve.

Part I.

Public Reserve Policy

I. PUBLIC RESERVE POLICY

1. INTRODUCTION

Development generates recreational and educational costs for a municipality. As land is converted from a raw to a developed state, the number of people using that land increases, and, correspondingly, so does the demand for schools and parks. In recognition of this situation, the Planning Act provides for "reserve dedication". Specifically, the Act authorizes a subdivision approving authority to require a landowner, as a condition of subdividing land, to give to a municipality or school authority, without compensation, either reserve land or money in place of reserve land. This land or money is, in turn, to be used for recreational or educational purposes.

Decisions involving reserve dedication are complex. For this reason, policies are necessary to guide the decision-making process and ensure that it operates in a fair and consistent manner. The following public reserve policies have been adopted by the Edmonton Metropolitan Regional Planning Commission to assist the Commission in making decisions involving public reserve in its capacity as the subdivision approving authority for urban and rural municipalities in the Edmonton Metropolitan Region.

2. DEFINITIONS

For the purpose of these policies, the following definitions shall apply:

Commission, in the context of these policies, means the Edmonton Metropolitan Regional Planning Commission acting in its capacity as the subdivision approving authority, or a person or persons appointed by the Commission to act as the subdivision approving authority.

Public Reserve Land means municipal reserve (MR), school reserve (SR) and municipal and school reserve (MSR).

Recreational and Educational Purposes means those purposes, specified in the Planning Act, for which public reserve land or money in place of public reserve land can be used, namely:

(a) a public park,

(b) a public recreation area,

(c) school purposes, or

(d) to separate areas of land that are used for different purposes.

School Authority means the board of trustees of a school district or school division or the council of a county.

3. PUBLIC RESERVE DEDICATION

The Planning Act cites four situations where the Commission cannot require public reserve to be dedicated. In all other situations reserve owing may be dedicated in the form of land for educational or recreational purposes; provided as money in place of reserve land to be paid to the municipality or a school authority; deferred by means of a caveat until further subdivision occurs; or dealt with in some combination of land, money or deferral. A further option regarding reserve dedication is for the Commission to give up its claim on all or a portion of reserve owing. This option however would be exercised by the Commission only in exceptional circumstances.

Policy 1: Exceptions to Reserve Dedication

In accordance with the Planning Act, the Commission shall not require the dedication of public reserve where

(a) only one lot is being subdivided from a previously unsubdivided quarter section of land, regardless of the use and size of that lot,

(b) land is being subdivided into lots of 40 acres or more, and the lots are to be used solely for agricultural purposes,

(c) the land being subdivided is two acres or less in area, or

(d) reserve land or money in place thereof, was provided in respect of the land that is the subject of the proposed subdivision.

Policy 2: Reserve Dedication Alternatives

Where public reserve is owing, the Commission shall require that such reserve be:

(a) dedicated as reserve land; or

(b) provided as money in place of reserve land, where reserve land is determined to be unnecessary at present or in the future; or

(c) deferred through a caveat (Deferred Reserve Caveat) filed against the subject lands, or other lands owned by the applicant in the same municipality, where reserve is considered to be unnecessary at present, but may be required in the future.

Policy 3: Combining Land, Money and Deferral

Subject to Policy 2, in making a decision on public reserve, the Commission may combine the dedication of reserve land, the provision of money in place of reserve land, and the deferral of reserve by caveat in a manner considered appropriate, provided reserve is dealt with in the full amount owing.

Policy 4: Giving up the Claim on Reserve

The Commission shall not give up its claim on all or any portion of public reserve owing unless:

(a) it can be demonstrated to the satisfaction of the Commission that the municipality would not require such reserve for recreational or educational purposes, at present or in the future; and

(b) the municipality recommends to the Commission that the claim on reserve be given up.

4. RESERVE LAND

Reserve land is provided at the time of subdivision for the purpose of parks, schools, recreational areas and to separate incompatible land uses. The Commission will normally require reserve to be dedicated in the form of land, in preference to money in place of land, and will only defer its decision on reserve owing where it is determined that no reserve land is necessary at present. As well, the Commission will be guided by any local statutory plans, in particular an Area Structure Plan, in making a decision on reserve and will ensure that reserve land is suitable, in terms of its location and quality, to serve the purpose intended.

Policy 5: Dedication of Reserve Land

Except as provided in Policy 7, the Commission shall always require that reserve be dedicated in the form of land for recreational or educational purposes, as opposed to money in place of land.

Policy 6: Guidelines for the Dedication of Reserve Land

(1) Reserve land shall:

(a) be dedicated in accordance with a municipal statutory plan, where the plan has specifically identified lands for recreational and educational purposes in the subdivision;

(b) have direct legal access by means of a public roadway or some alternative means satisfactory to the Commission;

(c) be of a suitable quality and character to serve the purpose intended;

(d) avoid awkward-shaped parcels which represent remnant lands within the subdivision;

(e) be concentrated into larger parcels, as opposed to being dispersed throughout the subdivision in smaller, isolated parcels; and

(f) be integrated with existing recreational and educational lands to create a contiguous park and open space system.

(2) The Commission may relax the above guidelines in a given situation where circumstances warrant.

5. MONEY IN PLACE OF RESERVE LAND

Where the dedication of reserve land would be unnecessary or inappropriate, the Commission may require money in place of land from the landowner. The amount of money is not to exceed the appraised market value of the equivalent amount of reserve land that would normally have been acquired. The Commission must specify the actual amount of money to be provided as part of its decision, based on an appraisal of the subject land as it exists in its current unsubdivided state. Money obtained in place of reserve land would be placed in a special reserve fund administered by the municipality or a school authority, and could be used only for recreational or educational purposes.

Policy 7: Provision of Money in Place of Land

The Commission shall require the provision of money in place of reserve land for recreational or educational purposes when:

(a) the amount of land which would be available as reserve would be too small to be properly used; or

(b) it has been determined that land for recreational or educational purposes is not needed in the subdivision area.

Policy 8: Value of Reserve Owing

The amount of the money in place of reserve land owing shall be determined by the municipality by means of a satisfactory appraisal submitted to the Commission of the market value of the land being subdivided.

Policy 9: Commission Appraisal

Notwithstanding Policy 8, where the municipality

(a) is unable or unwilling to submit an appraisal, or

(b) submits an appraisal unsatisfactory to the Commission,

the appraisal shall be performed by the Commission.

6. DEFERRAL OF RESERVE

The Commission may defer its decision on reserve until a future subdivision occurs, as opposed to taking either reserve land or money in place of reserve land as part of its current subdivision decision. The deferral of reserve is accomplished by registering a deferred reserve caveat (DRC) in the name of the Commission against the title of the new parcel or parcels being created, or other lands owned by the applicant in the same municipality. The caveat performs a "record-keeping" function by stating the amount of reserve that would be required should the further subdivision of the subject lands occur. The deferment of reserve will be directed only to lands which have a potential for future subdivision.

Policy 10: Deferral of Reserve

All or part of reserve owing on land being subdivided may be deferred by the Commission to one or more of the new parcels being created, or to other lands owned by the applicant in the same municipality, where it is determined by the Commission that:

(a) reserve is not required at present for recreational or educational purposes; and

(b) the lands against which the deferment is directed have a potential for future subdivision.

Policy 11: Pattern of Deferral

The amount of reserve land to be deferred, and the lands against which the deferment is directed, shall be determined by the Commission having regard to the recommendation of the municipality and any school authority.

7. TYPE OF RESERVE

Public reserve dedication can take one of three forms: Municipal Reserve (MR), where reserve land is owned by, or reserve monies are paid to, the municipality; School Reserve (SR), where reserve land is owned by, or reserve monies are paid to, a school authority; and, Municipal and School Reserve (MSR), where reserve land is owned by, or reserve monies are paid to, the municipality and a school authority jointly. In making any decision on reserve (i.e. land, money), the Commission must specify ownership with respect to these three options. In most cases, the Commission will require that any reserve land or money be provided to the municipality.

Policy 12: Ownership of Reserve

Where reserve land or money in place of reserve land is required by the Commission

(a) the reserve land shall be dedicated as Municipal Reserve (MR), and

(b) the money in place of reserve land shall be paid to the municipality,

unless the Commission, having regard for the recommendation of the municipality and any school authority, favours an alternative arrangement.

8. RESERVE AGREEMENTS

A municipality and one or more school authorities may enter into an agreement dealing with the dedication of reserve. In turn, the Commission is bound by the terms of the agreement insofar as the dedication of reserve is concerned. Thus, a reserve agreement will directly influence the final outcome of any reserve decision.

Policy 13: Reserve Agreements

Notwithstanding the aforementioned policies of the Commission, where an agreement exists between a council and a school authority respecting reserve dedication, the Commission shall decide on reserve in accordance with the applicable terms of that agreement.

9. PUBLIC RESERVE DECISIONS

In making a decision on reserve, the Commission will be as specific as possible. This is done to enable the applicant to understand fully the basis for the reserve decision, to provide the Alberta Planning Board with a clear statement of the Commission's position in the event of an appeal, and to avoid confusion at a later date.

Policy 14: Commission Decision

In rendering a decision on a subdivision application, the Commission shall specify the following:

(a) where the claim on reserve is to be given up, the amount of reserve to be given up;

(b) where reserve is to be dedicated as land, the amount, location and type of reserve land;

(c) where reserve is to be provided as money in place of land, the amount of money, and the municipality or school authority which would be paid the money; and

(d) where reserve is to be deferred, the amount of deferment, and the lands to which the deferment is to be directed.

Part II.

Background Information

II. BACKGROUND INFORMATION

1. INTRODUCTION

As land is converted from a raw to a developed state, the number of people using that land increases. This increased population, in turn, generates a demand for recreational and educational land and facilities to serve its needs. With this in mind, the Alberta Planning Act makes provision for the dedication of public reserve. Specifically, the Planning Act requires that as a condition of subdividing land, a landowner may have to provide, without compensation, either a defined portion of the land being subdivided, or a monetary sum equal to the value of that same land, to the municipality or a school authority for recreational or educational use.

2. POWERS OF THE SUBDIVISION APPROVING AUTHORITY

The Planning Act defines the powers of a subdivision approving authority (SAA) with respect to public reserve dedication. Three points concerning these powers are worth mentioning at this time.

First, reserve can only be acquired through the subdivision process. If a landowner chooses not to subdivide his land, only develop it, reserve is not a consideration. A development officer or development appeal board has no authority to require reserve as a condition of approval of a development permit.

Second, the SAA makes all decisions on reserve dedication, subject to an appeal to the Alberta Planning Board. While a municipal council, school authorities and other relevant agencies and departments are consulted, and may make a recommendation to the SAA, they have no direct decision-making powers in the matter under the Planning Act. However, the municipality and a school authority may enter into a formal public reserve agreement, and if this occurs the SAA would be bound by the terms of that agreement, insofar as reserve dedication is concerned.

Third, any decision by the SAA involving reserve can be appealed to the Alberta Planning Board by the municipality, any school authority having jurisdiction in that municipality, the landowner, or an individual owning property immediately adjacent to the lands being subdivided. Therefore, in the case of a dispute, the decision on a reserve issue rests with the Board.

3. EXCEPTIONS TO PUBLIC RESERVE DEDICATION

The Planning Act cites four situations where the SAA has no jurisdiction to acquire public reserve. These situations, shown in Figure 1, are as follows:

(a) where only one lot is being subdivided from a previously unsubdivided quarter section of land, despite the use or size of that proposed lot;

(b) where land is to be subdivided into lots of 40 acres or more in size, and the lots are to be used solely for agricultural purposes;

(c) where the land area being subdivided is two acres or less in size;

(d) where public reserve land or money in place of land was provided in respect of the land to be subdivided.

4. AMOUNT OF RESERVE DEDICATION

The Planning Act authorizes an SAA to acquire up to a maximum of 10 percent of the title area of the lands being subdivided as reserve. Theoretically a quarter section of land could yield 16 acres (160 acres X 10% = 16 acres) of reserve land, or its equivalent monetary value.

However, the 10 percent figure specified in the Act is a maximum. It is implicit that an SAA may take less than this amount depending upon the circumstances, or even completely give up any claim to reserve if it chooses. While in practice an SAA usually deals with reserve on the basis of the maximum 10 percent figure, situations do arise where the claim on reserve is given up.

It is also important to note that the 10 percent figure applies only at the outset, when a quarter section is initially being subdivided. Acquisition of reserve in differing amounts over time, through many separate subdivision applications, can significantly modify the 10 percent figure for a given parcel of land upward or downward. In effect, a parcel of land could end up owing considerably more or less reserve than 10 percent, depending upon the historical pattern of reserve dedication of the quarter section. For this reason, the SAA applies a deferred reserve caveat (DRC), discussed in detail further on in this report, as a means of accurately keeping track of reserve owing on a parcel of land over time.

In addition to the 10 percent maximum figure, the Planning Act authorizes an SAA to acquire up to an additional five percent of the land comprising the subdivision, over and above the 10 percent, where the subdivision is to accommodate medium or higher density residential development (i.e. 12 residential units or greater per developable acre of land). The additional five percent is calculated on the basis of the site's "developable land". Developable land is defined in the Planning Act.

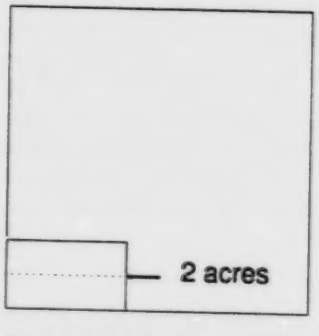
Figure 1

EXCEPTIONS TO PUBLIC RESERVE DEDICATION

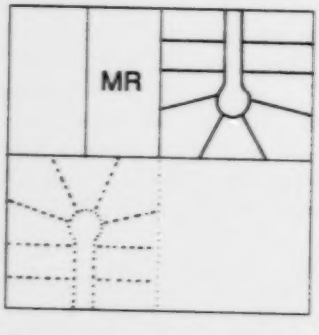
No Public Reserve can be required when:

Only one lot is being subdivided from an unsubdivided quarter section.

The lots being created are all at least 16.2 hectares (40.0 acres) in size and used solely for agricultural purposes.



The land being subdivided is 2 acres or less in size.



Reserve was previously dedicated in respect to the land being subdivided.

Assuming that an SAA has not given up its claim on reserve, and subject to the four exceptions just discussed, three basic alternatives are available to the SAA in dealing with public reserve:

(a) dedication as land;

(b) requiring money in place of reserve land;

(c) deferral of reserve.

Since each of these alternatives can be combined, a considerable range of outcomes for any reserve decision is possible. The alternatives are discussed in further detail at this point.

Figure 2 describes these public reserve dedication alternatives.

5. RESERVE LAND

Normally, reserve is taken in the form of land to be developed for recreational or educational purposes. Where reserve is dedicated as land, the SAA must specify the size and location of the reserve parcel. This is usually done on the tentative plan of subdivision which forms part of the subdivision decision.

The use of reserve land is restricted by the Planning Act to the following:

(a) a public park;

(b) a public recreation area;

(c) school purposes; or

(d) to separate areas of land that are used for different purposes.

A municipality or school authority cannot develop reserve land for other than the foregoing uses, or sell, lease or otherwise dispose of reserve land, unless it first removes the MR, SR, or MSR reserve designation from the parcel. The process of removing the reserve designation, termed disposition of reserve, involves public notification of the intent to remove the designation, and the holding of a public hearing if objections from the public are received. Disposition of reserve is undertaken by the municipal council through the Registrar of Land Titles, and does not involve the SAA directly.

6. MONEY IN PLACE OF RESERVE LAND

Where the dedication of reserve land would be undesirable or inappropriate, the Planning Act allows the SAA to require money in place of reserve land from the landowner. In these cases, the money acquired is not to exceed the appraised market value of the equivalent amount of land that could have been dedicated as reserve.

Figure 2

PUBLIC RESERVE DEDICATION ALTERNATIVES

RESERVE LAND

MR
SR
MSR

Land provided to municipality or school authority, or both.

MONEY-IN-PLACE OF RESERVE LAND

$

Equivalent monetary value of reserve land paid to municipality or school authority, or both.

DEFERRAL OF RESERVE

DRC

Decision on taking land or money deferred until further subdivision of land. Deferred reserve caveat (DRC) indicating amount of reserve owing filed against new lots.

NOTE: The dedication of reserve land, the payment of money in place of reserve land and the deferral of reserve can be combined in any manner.

In requiring money, the SAA must specify the actual amount of money to be dedicated as part of its decision. This is presumably to allow an appeal to the Alberta Planning Board if a dispute arises over the amount owing or method of appraisal. The Planning Act stipulates that the market value of the parcel proposed to be subdivided, and from which the amount to be paid is established, must be determined by an appraisal of the subject property within 35 days of the date the application for subdivision approval is made. The appraisal is usually undertaken by a qualified appraiser employed by the municipality, although an applicant may hire his own appraiser for comparison purposes.

Money obtained in place of reserve land is deposited in a reserve fund, to be used only for those purposes stipulated in the Act (i.e. recreational or educational uses). The reserve fund is administered by the municipality or a school authority, depending upon which body was awarded the money by the SAA.

7. DEFERRAL OF RESERVE

The Planning Act authorizes an SAA to defer its decision on reserve dedication until a future subdivision occurs, as opposed to taking either money or land as part of a current subdivision decision. Deferral of reserve would occur when the further subdivision of the parcel of land, against which the deferral is directed, is likely, and the exact need for reserve cannot be established at the time.

The mechanism of deferral is a Deferred Reserve Caveat (DRC) registered against the title or titles of the new parcels being created. A DRC identifies the amount of reserve that can be dedicated as money or land upon further subdivision of the parcel. In addition, it serves a number of distinct purposes which benefit the landowner, the SAA, the municipality and a school authority.

Specifically, a DRC is a means of "record-keeping" which allows the SAA to accurately determine the reserve owing on a subject parcel. A DRC also allows a municipality or school authority to readily determine the potential amount of reserve that can be acquired in the future. This assists in both park and school planning.

Moreover, a DRC allows a landowner or a potential purchaser to determine how much reserve is owing on the property should subdivision occur. Because of previous dedications and deferrals, the amount of reserve owing on a given parcel could be considerably more or less than the maximum 10 percent figure that applied to the original quarter section.

The Planning Act also provides for the deferral of reserve to lands not directly involved in the subdivision application where the new lands to which the deferral is directed:

(a) are situated in the same municipality as the lands being subdivided; and

(b) are owned by the same landowner as the lands which comprise the subdivision application.

This situation further complicates the deferral process since it allows the SAA to shift reserve throughout a municipality, subject to the above conditions.

Figure 3

TYPES OF PUBLIC RESERVE

RESERVE LAND		MONEY-IN-PLACE OF RESERVE LAND	
MR	MUNICIPAL RESERVE Land owned by the municipality.	$	MUNICIPAL MONEY Money paid to the municipality.
SR	SCHOOL RESERVE Land owned by a school authority.	$	SCHOOL MONEY Money paid to a school authority.
MSR	MUNICIPAL AND SCHOOL RESERVE Land owned jointly by the municipality and a school authority.	$	MUNICIPAL AND SCHOOL MONEY Money paid to the municipality and a school authority.

8. TYPE OF RESERVE

As shown in Figure 3, public reserve can take one of three forms:

(a) Municipal Reserve (MR) where the reserve land is owned by, or the money in place of reserve land is paid to, the municipality;

(b) School Reserve (SR) where the reserve land is owned by, or the money in place of reserve land is paid to, one or more separate or public school authorities, as specified by the SAA;

(c) Municipal School Reserve (MSR) where the reserve land is jointly owned by, or the money in place of reserve land is jointly paid to, the municipality and one or more separate or public school authorities, as specified by the SAA.

The SAA must determine, as part of its decision on a subdivision application, the type of reserve land or the authority to which reserve monies are to be paid.

Further, the Planning Act enables a municipality and school authority to enter into an agreement concerning the ownership and control of reserve, among other matters. Where an agreement exists, the SAA is bound by it, insofar as public reserve dedication is concerned.

9. CONCLUSION

While the foregoing discussion provides an overview of reserve dedication, it must be recognized that the topic is complex. Given the variables involved, the potential outcomes for any reserve decision are considerable, even where only very simple subdivisions are concerned. Although it is not possible to create a formula that applies in every situation, it is possible to make consistent and equitable decisions. To a great extent, the SAA will be guided by professional advice, practical experience and established policy in this regard.